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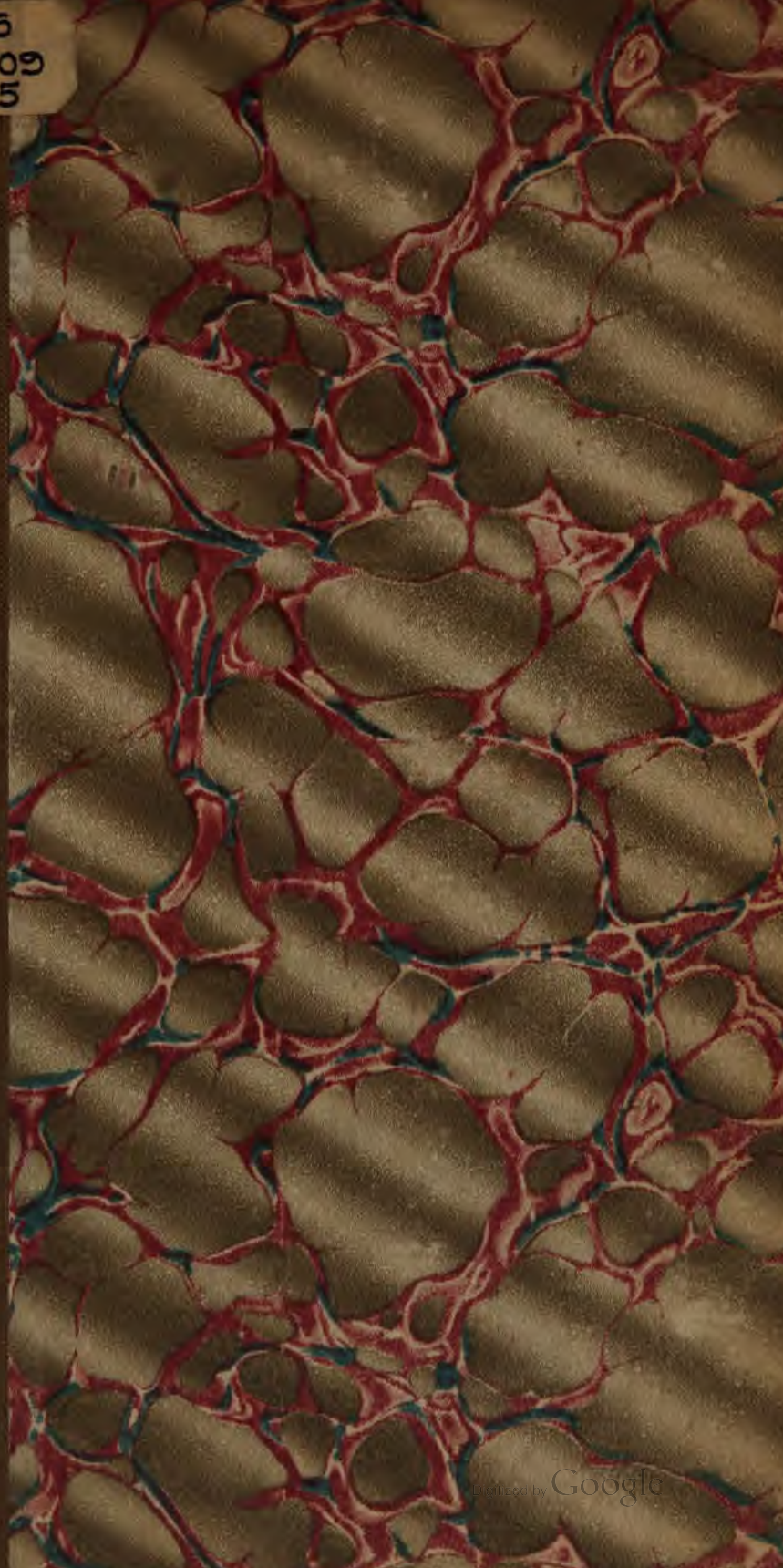
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6
EXECUTIVE USURPATION.

SPEECHES

OF

HON. GEORGE F. HOAR,
OF MASSACHUSETTS,

IN THE

SENATE OF THE UNITED STATES,

DECEMBER 6 AND 11, 1893.

WASHINGTON.

1893.

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The Author

SPEECH
OF
HON. GEORGE F. HOAR.

Wednesday, December 6, 1893.

HAWAIIAN AFFAIRS.

Mr. HOAR. I now call up the resolution which I submitted yesterday, and ask that it may be read.

The VICE-PRESIDENT. The resolution will be read.

The Secretary read the resolution, as follows:

Resolved. That the President be requested, so far as in his opinion it shall not be inconsistent with the public interest, to communicate to the Senate copies of all instructions which may have been given to any representative of the United States, or any naval officer thereof, since the 4th day of March, 1881, in regard to the preservation of public order in Hawaii, or the protection of the lives and property of American citizens, or the recognition or support of any government there.

The VICE-PRESIDENT. The question is on agreeing to the resolution.

Mr. HOAR. Mr. President, this resolution is an ordinary resolution of inquiry such as the Senate rarely hesitates to pass on the request of any member of the body. It simply asks for information in regard to facts of public interest necessary for the information of all Senators in the discharge of their public duties, and, in accordance with the custom in such matters, it expressly defers to the President's judgment in the matter as to whether any particular paper or other fact asked for should or should not be made public with due regard to the interests of the public service.

It has not seemed to me that there was any occasion for delay in the passage of this resolution because of the absence of the chairman of the Committee on Foreign Relations [Mr. MORGAN]. He may have from private sources or from private consultations with the Administration all the information which is needed by other Senators who do not sustain that confidential relation.

The resolution asks for the instructions which indicate the attitude of this Government toward Hawaii in three Administrations; first, that of the first Administration of the present President of the United States, then for the instructions given by the two able and eminent gentlemen who filled the office of Secretary of State during the last Administration, and for the instructions which have gone out during the present Administration.

I hope and believe that those instructions will show a settled

and consistent policy, certainly down to a very recent time, in regard to which there has been no party or political difference of opinion.

If the President's message means anything, so far as I can understand it, it means that the Executive of the United States is meditating and considering the question whether he shall, by his own executive authority, commit an act of war against a friendly power. There can be no question that the Government which was in power in Hawaii at the last advices is a friendly Government. It established itself without violence, after an attempt on the part of the Queen to commit an act of revolution and usurpation, which is admitted and conceded by all parties. The Queen undertook of her own authority and in violation of a written existing constitution to exclude from the right of suffrage in that nation a large and important portion of its citizens, important in regard to numbers, in regard to character, in regard to intelligence, and in regard to property. I suppose nobody will be so hardy as to deny that that was a gross attempt at usurpation and revolution.

Now, the people, or some of them, resisted that act and set up a new government, and that government has been recognized by all the civilized powers of the world, so far as we are aware, who have international relations with Hawaii. It has been recognized by the Government of the United States. It is represented at the capital of the United States by a duly accredited representative, and is recognized by the present Executive, with whom he is in diplomatic intercourse; and therefore to undertake on any pretense whatever, or for any reason whatever, to enter that kingdom or republic, or however it may be defined and described, and overthrow the existing government is an act of war; and it is none the less an act of war that it is an act meditated, or proposed, or committed against a feeble and small government.

Now, Mr. President, the suggestion that the United States may have acted with undue haste in the recognition of this government or that it may have violated international law by taking part in the revolution that established it, will not in my judgment bear examination for a moment. If at some time in the past this country, even in violation of right, had aided in putting in power a government which has since that time been recognized by us and by other countries as a lawful government and is lawfully and peacefully exercising its functions, is it possible that because that might have happened there is any duty or any right under the law of nations, after the fact in the past has become established, to make war on that government and overthrow it and put in power another? If that be true, it was clearly the duty of France, whenever after our Revolutionary war she should see fit, to have joined Great Britain in overthrowing the United States and putting the Colonies under the English power once more. I suppose there can be no question that our treaty of alliance with France, which contributed so much to the establishment of our independence, was a violation of international obligation as between France and England.

The matter of the establishment of that government is a fact and not a question of right or wrong, as far as all other govern-

ments are concerned. There is scarcely a government on this continent south of us (and, indeed, we must include our own Government in the statement) that does not owe its existence to a revolution, as to the rightfulness of which there is debate and discussion and question, and in regard to which the defeated party and perhaps other nations may have something to say if they are to express an opinion about it. However, international law recognizes nothing but the fact of government, and it can in the nature of things recognize nothing but the fact of government.

Now, Mr. President, if what the President implies in his message be true, that because he has concluded there was some wrongful action on the part of our minister under a previous Administration in aiding the establishment of the present government he thinks it is his duty to overthrow it and put another one in power, he is meditating an act of war against Hawaii and it is impossible to escape from that conclusion. I think the department of the Government with whom the power and duty under the Constitution of declaring war under proper circumstances are lodged is entitled to prompt and immediate knowledge of all the facts which bear upon the question.

There are some other things that seem to me singular and indefensible in this transaction. I shall not now go the length of declaring that under no circumstances ought the President of the United States to send a commissioner abroad without the authority of express legislation for the purpose or without the advice and consent of the Senate. But certainly the cases are very rare when that ought to be done. Its being done can be justified only in the case of a grave, imminent, and pressing emergency and public danger.

This gentleman was sent abroad when the Senate was in session, on the 7th of March, 1893, with full opportunity on the part of the President to consult this body. He was sent abroad with the duties practically of a diplomatic representative of this Government. The report to which the President alludes shows that he is in constant communication with the authorities of Hawaii and is informing them officially what this Government will do and will not do. His orders gave him paramount authority; and in addition to that he seems to have assumed the duty and the power of determining whether or not certain orders should be given to the naval officers of the United States in the port of Honolulu.

If the power to make diplomatic representations to foreign governments and the power to issue orders to our own naval officers and the power to pull down the American flag where it was peacefully floating be not an official power, I should like to know what definition can be given of official power as distinguished from personal agency. But if the President of the United States could exercise his own functions by a deputy, yet here, with the Senate in session and the three-months' session of Congress having since intervened, it is very strange that the Executive of the United States has undertaken to commit to this gentleman these delicate and important official responsibilities without even communicating the fact officially either to the Senate or to Congress. As far as possible the United States is to

be dragged into a war in strict confidence, without the knowledge of its legislative authority.

It is said that the persons composing that provisional government, and supporting it, and represented by it, are Americans by birth, and that many of them retain their American citizenship. I suppose that is true. The dual citizenship which belongs to those persons under the peculiar condition of those islands is a citizenship conferred upon them by the express provision of the constitution of the kingdom of Hawaii, and in one of the official communications of Secretary Bayard, which will be found in the document laid before the Senate during his administration of the office of Secretary of State, it was expressly recognized and approved by him, doubtless by the direction of President Cleveland.

Now, unless I mistake the temper of those men, they will not yield the lawful government which they have established and which the whole civilized world has recognized, to one hundred or two hundred marines, acting under an unconstitutional and unlawful authority of the President of the United States. They have got something behind them which the Queen had not—the consciousness of a rightful cause, the knowledge that the true interests of that people and all its civilization are at stake; and it is not the wont and fashion of men of American birth and lineage to give up such a cause as that without a struggle. Then, according to the plain intimation of President Cleveland as to what he thinks his duty, there is war.

Now, Mr. President, I think it is manifest that this is a transaction which the Senate and the people are entitled to understand, and they are entitled to understand it without delay. If this thing has not been done yet, we want that the swift and indignant remonstrance of the American people shall make itself felt and shall be heard by Executive ears, however dull they may seem to be.

When President Grant proposed the plan, which he so honestly and so zealously approved, of initiating proceedings for the acquisition of San Domingo he obtained, if I remember aright, legislative authority to send abroad his commission to inquire and ascertain the facts.

Now, was there any reason why President Cleveland should not have communicated to us at the late three-months session the fact that there was this trouble; that he feared the United States had done something wrong, or had made a mistake in the past and asked for a fit and suitable legislative authority to have the facts ascertained?

I shall be curious to hear from any defender of the Administration on what precedents the Executive relies. I shall be curious to hear from him an explanation of this most extraordinary and most secret proceeding upon his part.

Mr. MANDERSON. I ask the Senator if it is not the fact that the personal representative of the President, whatever may have been his title—Paramount Extraordinary Blount perhaps—returned to this country before Congress adjourned at the extraordinary session?

Mr. HOAR. I am not sure, but I think that is true. The

President of the United States, I suppose, had months ago all the information which this gentleman could give him.

I do not wish to be understood as expressing any opinion in regard to the policy of annexing this distant territory to the United States. I do not wish to be understood now as entering into the discussion how far and on what condition and under what circumstances the United States may find it for the interest of both nations to establish, with the assent of Hawaii, a rightful and lawful protectorate there, or under what circumstances that group of islands may become a territory or dependency of the United States. All those questions are foreign to the present occasion.

It seems to me, Mr. President, that the President of the United States is adopting and getting into the habit of adopting rather extraordinary language in his dealing with the other branches of government when he tells us in his message after the history of the appointments, foreign and domestic, of the last six months, that Congress passed the civil-service law not because they thought it was right, but because they were afraid of popular opinion; and when he tells us that there is no serious doubt about this matter. He says this after the action of his predecessor, who never failed in courtesy to him, in the face of the utterances of the American press, in the face of what I believe to be the clear conviction and judgment of three-fourths of the American people, without distinction of party. I should like to be at liberty to relate to the President of the United States some things that I have heard said by Democrats in my part of the country, quite as honored and quite as distinguished and quite as high in the public esteem and confidence as any person holding any official position however illustrious. I think, I say, it is presumptuous when the President informs us that there can be no doubt—

that the constitutional government of Hawaii had been subverted with the active aid of our representative to that government, and through the intimidation caused by the presence of an armed naval force of the United States which was landed for that purpose.

That is in conflict with the declaration of the representative of the United States, an eminent and highly trusted citizen. It is in conflict with the fact that before those troops were landed the government buildings were in possession of the new government; and it is in conflict with the fact that the friends of the new government had at the moment (without saying anything about the difference of race or the habit of using weapons) the control and command of the larger portion of the military resources of that island; and it is in conflict with the public declarations of his predecessor. I should have no doubt whatever that if upon all the known facts, including the report of Mr. Blount, the question were submitted to this body, it would express a very different judgment from that of the Executive, and it would not be a party question.

Monday, December 11, 1893.

DIPLOMATIC REPRESENTATION IN HAWAII.

Mr. HOAR. I submit a resolution, for which I ask present consideration.

The resolution was read, as follows:

Resolved, That the President be requested to inform the Senate, if in his opinion it be not inconsistent with the public interest, whether any person whose name has not been submitted to the Senate for its advice and consent, and if so, what person, has been appointed since the 4th day of March, 1893, to represent the United States in the Hawaiian Islands; and

Whether such person has been accredited to the President of the Executive and Advisory Council of the Hawaiian Islands; and

Whether such person has been presented to the head of the Government of the Hawaiian Islands; and

Whether any, and if so what authority has been given to such person touching the relations of this Government to the then existing or other government of the Hawaiian Islands and the protection of American citizens therein; and

Whether any discretion or power has been committed to such person to determine when the naval forces of the United States should be landed therein or withdrawn therefrom; and

Whether any authority has been committed to such person to use physical force in the territory of said Government, or to land an armed force there; and

Whether such person has been authorized to, or has in fact corresponded in regard to the public affairs of the Government of the Hawaiian Islands with any private person, newspaper, or other periodical; or has been authorized to, or has in fact undertaken to receive in said Hawaiian Islands the testimony of any private person, or has requested or received written communications from any private person in regard to the lawful and existing Government there, or the circumstances under which said existing Government was established; or any other matter relating to the public affairs thereof; and

If any such appointment or authority has been made or given, further to inform the Senate whether the same was made or given at a time when the Senate was in session, or has continued in force during any session of the Senate, or of Congress, or of any part thereof; and further

Whether such appointment or authority was communicated to the Senate during any session thereof; and further

Whether any person has accepted, or undertaken to accept, the office of a commissioner or public minister with the power aforesaid, or any of them, or has undertaken in any correspondence with the Government of Hawaii, or with any private person, to describe himself as commissioner of the United States.

Mr. GRAY. I hope—

The PRESIDENT *pro tempore*. The Senator from Massachusetts asks unanimous consent that the resolution be considered at this time. Is there objection?

Mr. GRAY. Let it go over.

Mr. HOAR. Mr. President—

The PRESIDENT *pro tempore*. The resolution being objected to—

Mr. HOAR. I should like, before the resolution goes over—

The PRESIDENT *pro tempore*. Does the Senator from Delaware withdraw his objection?

Mr. HOAR. I should like to make some remarks to announce the purpose of the resolution if the Senator from Delaware has no objection.

The PRESIDENT *pro tempore*. Does the Senator from Delaware withdraw his objection?

Mr. GRAY. I think the resolution, so far as I can gather

from imperfectly hearing it read at the desk, is of sufficient importance to go over, and any discussion that is to arise, as naturally it may, had better go over with it.

Mr. HOAR. I suppose the custom of the Senate is without an exception that whenever a Senator introduces either a resolution or a bill and desires to make some remarks explanatory of its purpose he is allowed to do so without waiting for the time when the bill or resolution comes up under the rule. I never knew in my long experience here an objection raised to such an explanation. I wish it understood that I merely desire to make a few remarks pointing out the purpose of the resolution to accompany it.

Mr. GRAY. The resolution is upon a matter of very great public interest, in which the people are much interested, and it will naturally provoke discussion, because, if we may judge from the remarks made by the distinguished Senator from Massachusetts the other day, upon a similar resolution, he had a great deal to say in a very emphatic way which will naturally provoke some discussion, interlocutions, and what not. I think the resolution had better go over until to-morrow. I am always very glad, as the Senator from Massachusetts knows, to hear him on any public question, and if I thought it would interfere with hearing him I should be the last one to interpose an objection. But I know we shall hear him.

Mr. HOAR. I wish simply to have the question understood, Mr. President. The Senator from Delaware, whether—

The PRESIDENT *pro tempore*. Does the Senator from Delaware withdraw his objection?

Mr. GRAY. I withdraw my objection for the purpose of allowing the Senator from Massachusetts to explain his resolution.

Mr. HOAR. Very well; that is all I wish to do.

The PRESIDENT *pro tempore*. The Senator from Massachusetts will proceed.

Mr. HOAR. Mr. President, if the Secretary will send me the resolution which is before the Senate I desire to make some brief observations in explanation of it.

I suppose every Senator understands that certain allegations in regard to public facts have been extensively made in the press of this country and of foreign countries. They have been the subject of comment by members of this body and by persons addressing the people on public questions in the recent campaign, both members of this body and others, and have been assumed to be true. They have met with no denial or question from any quarter; and yet they have not been communicated to this body or to the public from any official source.

If there has been any communication made to the members of this body as individuals that communication has been marked "confidential," and I am informed beyond question, while that communication marked "confidential" was in the possession of Senators, without any withdrawal of the confidence, a high officer of the Department of State communicated the same information to the representatives of four newspapers, not being marked "confidential" so far as they were concerned, and on being applied to by the representatives of other newspapers declined on the alleged ground that the newspaper applying would

not make good use of the information. Those four newspapers were zealous, thoroughgoing, and I had almost said unscrupulous supporters of the Administration.

Mr. President, one of those allegations is that the President of the United States on the 7th day of March, 1893, the Senate then being in session, commissioned a person to proceed to the island of the Hawaiian group in which Honolulu is situated, and accredited him by letter as a commissioner of this Government to that Government; that he gave the officer instructions to represent the purposes and opinions of this Government to that Government; authorized him to have full access to the archives; said in the letter of instructions that he was to be paramount as the representative of the United States in that island, and directed the ordinary minister of the United States there to that effect. If that allegation be true, it seems to me as gross a violation of the Constitution of the United States as was ever charged upon or imputed to any public official.

The Constitution of the United States expressly enumerates "ambassadors, other public ministers, and consuls" among the persons who must be appointed by the President with the advice and consent of the Senate. If anybody be a public minister within the meaning of the Constitution, it is certainly a person whose authority is paramount in representing the United States over other public functionaries in the kingdom or power to which he is accredited. A person accredited to a foreign friendly power, with authority to command the Navy of the United States to preserve order, to protect the rights of the citizens of the United States, there to be presented to that government, and who the ordinary representatives, both consul and ambassador, are ordered to treat as paramount to them, would seem to be a public minister.

But that is not left to this inference, plain and clear though it is, because the Legislature of the United States has expressly dealt with that question. Section 1674 of the Revised Statutes, after enumerating the powers of consuls and commercial agents and consular officers, goes on to say:

"Diplomatic officers" shall be deemed to include ambassadors, envoys extraordinary, ministers plenipotentiary, ministers resident, commissioners, charge d' affaires, agents, and secretaries of legation, and none others.

So by the express legislative enactment of the Revised Statutes, copied from an earlier statute, this commissioner was a diplomatic officer of the United States, and no other, unless one of the persons otherwise enumerated in that section should be such officer.

Mr. President, it is not necessary to say here nor to say to the American people that an attempt to usurp the power of appointing and commissioning such officer, without the consent of this body, is an attempt to usurp a power over all the diplomatic relations of this Government, which otherwise would require the assent of this body or the assent of the two legislative departments of the Government.

That, too, is not left to any inference of mine. When the convention which framed the Constitution of the United States established the provision for the appointment of foreign ministers, including ambassadors and other ministers, the power of such

appointment was, in the first place, separated from the other constitutional powers of the President and lodged in Congress; and Mr. Madison, I think it was, declared that the man who could create the judges of a country would have exclusive power over their laws. So, the power which could create by its own unchecked will the foreign officers of the country would have exclusive control of the foreign policy of the country. After full discussion the power was shared with the two branches of the Government as it now stands.

Mr. President, what, if these statements which unchallenged and unquestioned have passed current in the country for the past three months be true, has been the purpose for which that diplomatic officer has been sent to the Hawaiian Islands, and what has been his conduct there? I wish the Secretary to read a single section of the Revised Statutes of the United States in regard to the powers of these officers. I call attention to section 1701 of the Revised Statutes of the United States, which I ask the Secretary to be kind enough to read.

The PRESIDENT *pro tempore*. The Secretary will read as requested.

The Secretary read as follows:

Sec. 1751. No diplomatic or consular officer shall correspond in regard to the public affairs of any foreign government with any private person, newspaper, or other periodical, or otherwise than with the proper officers of the United States.

Mr. HOAR. Mr. President, if the statements which have been taken for granted on both sides of this Chamber be true, this diplomatic officer, unconstitutionally appointed by a gross usurpation of power when the Senate was in session, on the 7th day of March, 1893, proceeded to Hawaii and proceeded to open correspondence with private persons there in regard to the public affairs of that country. He called before him certain citizens, he addressed letters to other citizens, he took their replies orally, requested them to reduce their oral communications to writing, and transmitted that private correspondence to the President of the United States.

If there can be conceived a case which this legislation was intended to prohibit, it would be the entry upon the territory of a foreign government and the corresponding with private persons or taking their testimony in regard to the lawfulness of the establishment of that government.

Does anybody suppose that the United States of America would submit for a moment to the presence of a British minister, or the minister of any other power, who should establish headquarters and invite correspondence with disaffected private persons in regard to the character or the lawfulness of the established Government of the United States, or in regard to the title of the existing Executive to his office?

Mr. President, the one thing above all others at which that legislation was aimed is the thing which is said to have been done. The United States would never have dreamed—I will not say would never have dared, but it would never have dreamed—in its scrupulous regard for its own honor at any time before the year of our Lord 1893, of sending an envoy to open correspond

ence in regard to the public affairs of the nation to which he is accredited with its private citizens, or denizens there, not citizens.

So this act charged—I will not say whether truly or not, but charged by the press of the United States and not denied—the usurpation of the functions of appointing a foreign ambassador or minister in violation of Constitution and law alike, was followed by an equally gross violation of the express law of the land as found upon our statute books by the person so unconstitutionally appointed.

Mr. President, the public belief goes further than this. It goes so far as to suppose—I do not say whether truly or not—that this official reported his gross and palpable violation of the law of the United States to the authority from which he derived his appointment, and, instead of being reproved, instead of being instantly recalled, he was rewarded, or at any rate the act was followed by a regular and ordinary diplomatic appointment to the same Government.

It seems to me that the honor of the United States, that the dignity of the Senate, that the honor of the Executive itself requires a prompt and immediate and indignant refutation of these charges, which are so extensively made. Our statutes are full of safeguards and precautions against a usurpation of this kind. Section 1684 of the Revised Statutes said:

To entitle any charge d'affaires, or secretary of any legation or embassy to any foreign country, or secretary of any minister plenipotentiary, to compensation, they shall respectively be appointed by the President, by and with the advice and consent of the Senate.

There is a further provision in regard to the receiving of salary by other diplomatic officers. Section 1760 of the Revised Statutes provides:

No money shall be paid from the Treasury to any person acting or assuming to act as an officer, civil, military, or naval, as salary, in any office when the office is not authorized by some previously existing law, unless such office is subsequently sanctioned by law.

Mr. President, there is another matter to which I should like to have the reflections of my honorable friend from Delaware address themselves before this resolution comes up to-morrow. It is this: As I have said, no communication upon this subject has yet been received by the Senate in its official capacity. Whatever public communications have been made, have been made to the press, and to favored members of the press; and yet, perhaps, I am stating more than I ought to state in regard to that matter, because if the reports in the New York World of yesterday, and I think in the New York Evening Post of Saturday afternoon, be true, our ambassador to England, who understands too well diplomatic propriety and precedent by long experience in the office of Secretary of State and long experience in this body to violate them, has been instructed to make a communication to the English public, in which the information withheld from the American people and withheld from us is most freely communicated. I ask the Secretary to read from the New York World of Sunday, December 10, beginning with "London December 9."

The Secretary read as follows:

LONDON, December 9.

A representative of the Associated Press showed United States Ambassador Bayard the special dispatch to the Associated Press from Auckland, and Mr. Bayard, after reading it with great interest, said:

"President Cleveland will deal with the weak Hawaiians in the most magnanimous manner, and will not force upon them a government which they have not had a full chance to discuss."

Regarding dispatches published in the Times and Standard to-day indicating that President Cleveland is about to reverse his Hawaiian policy and that new instructions to this effect have been sent to Hawaii, adding that the whole question would be sent to Congress, Mr. Bayard said:

"There can be no reversal of a policy based simply upon justice and magnanimity. President Cleveland's policy is one of noninterference. He had no intention of entering the island and deposing the Government. The policy of the United States toward Hawaii is not a selfish one. On the contrary. President Cleveland's intention is that no advantage shall be taken of the weakness of the Queen's party, and that the Queen shall have a full and fair chance to get on her feet if possible. Hawaiian native autonomy has been so enfeebled by late events that I hardly know whether the Hawaiians can avail themselves of the offer of the President to restore the Queen to the throne."

Mr. HOAR. Now, Mr. President, if that report be authentic, which I hope will turn out not to be the case, all I have to say is this: The opinion of the honored representative of the United States at the Court of Great Britain that the present President is magnanimous I suppose is an opinion which he entertains *ex officio*, and which all good Democrats entertain *ex parte*, and I have no quarrel with that. But if he has stated to the British public that President Cleveland has offered to restore the Queen to her throne in Hawaii he has stated it of course upon full authority from the Administration that commissioned him, and therefore if that be true it is also true that for some reason of state, which we are entitled to understand, Great Britain is taken into a confidence which neither the Senate nor the people of America share.

When we heard that the President's message was published in London in the morning papers in advance of its delivery to the Senate we all supposed that one of those accidents for which nobody was specially responsible had taken place in not keeping documents secret which were intended to be secret until officially made public, but we may not assign such an explanation as that to an official communication.

Mr. President, I want this matter to be separated from all questions of our dealing with Hawaii; from all questions of annexation or protectorate or dependency; from all questions in regard to which the two parties are divided. If it be true that the President of the United States, the Senate being in session, authorized an officer to exercise paramount diplomatic authority in another country with which we are at peace, directed the consul and the resident minister to promote his success by every means in their power, placed the archives under his complete and untrammelled inspection, authorized him to employ at his discretion the naval power, and to land or to withdraw the forces of the United States at his will, and gave him the title which is enumerated as one of the titles of diplomatic officers in the act of Congress, he is standing, in my judgment, upon very slippery ground, and he had better step on to terra firma rapidly and at once.

If, in the next place, such an official entered that territory and established a correspondence with private persons about its public affairs, taking testimony, making written communications, receiving replies thereto, that officer violated in a most gross and palpable manner the express written law of the American people. And if he reported that action to the President and it was approved, and the President made himself an accomplice after the fact in that violation of law, he is standing upon ice not only very slippery but very thin, especially if after that act of this public commissioner he proceeded to decorate him with a new diplomatic appointment.

Mr. President, the ostrich puts his head in the sand and thinks his body will not be seen. The rhinoceros hides in his mud-puddles and breathes through the tip of his nose and thinks he will not be seen. But neither of those is a fit and suitable precedent for the Executive of the United States. The people have a right to know, wish to know, and will know, let me say to my honorable friend, the truth in this matter. If in addition to all this the public policies in regard to grave foreign matters now, when the third session of the Senate has gone on for a week, it having been three months in session before, and six weeks in session in the spring, from the 4th day of March, 1893, the first communication of a purpose to restore that queen has been made by the American minister to the people of Great Britain when we are groping after it in vain, while no Constitution or no statute may have been violated something else has been violated, which I will not now attempt to specify.

COLLOQUY WITH MR. VILAS.

Wednesday, December 6, 1893.

Mr. VILAS. Mr. President, I should like to take part at some time in the discussion of this question, but it seems to me that it is due to all of us before a discussion proceeds, from which enlightenment of the people and benefit to ourselves and to the country should follow, that we ought to be in a position to deal with the facts and to know what are the trustworthy evidences of facts.

There can be nothing more desirable to the proper understanding of this question than the utmost fullness and completeness of information, and I desire most particularly that everything which is asked for in this resolution, and much more besides, shall be furnished to this body to enable our discussion of this question to proceed upon an intelligent basis.

But, Mr. President, it seems to me that there are reasons why we ought not at this moment to adopt this resolution. In his message, read but the day before yesterday, the President made but a brief statement of his general position in reference to Hawaiian affairs. He said:

Additional advices are soon expected. When received they will be promptly sent to the Congress, together with all other information at hand, accompanied by a special Executive message fully detailing all the facts necessary to a complete understanding of the case, and presenting a history of all the material events leading up to the present situation.

Mr. President, in view of that complete and ample proffer of information, which in the general terms employed would seem inevitably to comprehend all that this resolution specifically seeks, it occurs to me that it is a more dignified course for this body to pursue to defer making a request of the President, which, in the very terms in which it is made, defers until such time as he shall see fit to send the information we seek. It would be unreasonable to presume that the President would see fit to send forward some special items of information when he is contemplating bringing to the knowledge of this body the full and ample stock, in every aspect in which the subject can be considered, which he has at hand, and upon which he will stand for the proof of the facts and the wisdom of his action.

Mr. HIGGINS. Will the Senator from Wisconsin allow me?

Mr. VILAS. With pleasure.

Mr. HIGGINS. I ask the Senator from Wisconsin if the information already accorded by the President contains the instructions under which the minister to Hawaii is now acting or proposes to act?

Mr. VILAS. I presume the Senator from Delaware is as well advised as the rest of us that the information which we individually possess in respect of this subject we hold now under the seal of confidence.

Mr. HIGGINS. But we can say what it does not contain. Further, I do not know that any confidence has been reposed in us.

Mr. VILAS. I do not understand that a confidence is to be preserved by answering questions in the negative, for a shrewd inquirer will very soon, by the process of *reductio ad infinitum*, find out what he desires.

Mr. HOAR. If the Senator will pardon me—

Mr. VILAS. With pleasure.

Mr. HOAR. I understand that Mr. Blount's report was published in the New York Herald weeks ago by the instrumentality of a Mr. Nordhoff, as I understand.

Mr. VILAS. Mr. President, the Senator from Massachusetts could only understand that extra-officially from a source of information which he ought not to weigh in a discussion of this kind. We are entitled to have official information. We are advised by the President that, for the purpose of acquiring knowledge of the facts, he sent an accredited commissioner to these islands to seek for trustworthy information, avoiding the confusion of newspaper discussion and newspaper correspondence, which we all know is so liable to be colored by partisanship or particular interests. That information we ought to be able to employ and use in our discussion.

Mr. ALDRICH. Will the Senator allow me?

Mr. VILAS. With great pleasure.

Mr. ALDRICH. I should like to ask the Senator what assurance we have, and what assurance the country has that, pending the information which may be sent to us in the President's own time, some act may not be committed by the representatives of the United States which would commit this country to a policy of which Congress and the people of the country would not approve?

Mr. VILAS. Mr. President, this body of the people of the United States have the assurance that the Executive whom they chose will discharge his duty in the same manner in which he has in the past, with fidelity to his convictions, with courage, with uprightness and sincerity of purpose.

Mr. ALDRICH. Does the Senator from Wisconsin contend that the policy to be pursued by the United States as to our relations with foreign countries in the matter of interference in their domestic affairs, or as to some overt act of war, is a question for the President of the United States alone to determine?

Mr. VILAS. That subject is one which we shall discuss at length, but is utterly foreign to the observations that for the time being I am making. The suggestion of the distinguished Senator from Rhode Island is not apt in any respect, for the reason that this proposed inquiry leaves the question of answer to it to the discretion of the President himself. It is a matter as to which the question suggested by the Senator from Rhode Island does not intervene. The President, in proper, respectful, and due official consideration of this body, need not answer this

resolution at all. Therefore the inquiry into the question of whether it belongs to Congress or the President to determine the method with which the Government of Hawaii shall be treated is not a consideration which applies to the resolution now under discussion.

There is another circumstance to which I desire to call the attention of the Senator from Massachusetts, for I can affirm that no man can more desire than those upon this side of the Chamber desire, the fullest and most complete illumination of the facts and from the most trustworthy sources of evidence; but at this time it happens that the chairman of the Committee on Foreign Relations is absent; that he who stands second upon that committee in the arrangement which the Senate made of it is also absent, and therefore the committee is not in a position to consider this question at this moment in the manner which is customary.

I would not in the least make a motion or propose a step which did not consider the right of every Senator to information full and complete, and all the usual methods by which it can be obtained; but under the circumstances it seems to me that the inquiry to the President should be pretermitted and that at some later day it should be made.

We can not discuss this question except upon some supposititious case. It is easy to put it, and it may be that it would be no breach of confidence to put it. The Senator from Massachusetts has seen fit to say that the President is making an act of war upon Hawaii.

Suppose it should be disclosed when the facts come to be known that Hawaii was at peace; that no step had been taken in the conduct of the public affairs of that nation which involved or had produced one single trivial act in breach of the peace, and yet at the request of a body of men who were but in part American citizens, the minister of the United States, assuming some authority of which I do not know the origin, ordered troops upon the soil of the Hawaiian Kingdom, and so placed those troops that they were drawn up across the street from the Government house of the Hawaiian Kingdom; and suppose it should turn out that he did this in confederacy with people resident in Hawaii, of whom but a portion were citizens of that Government and the rest strangers or foreigners prosecuting their individual courses with the authority or under the permission of that Government; and confederating with these he stood that body of people living there upon the platform of defense furnished by the troops of the United States, and then with the military power of the United States at its back a committee which had demanded beforehand of the minister of the United States his guaranty of protection read their proclamation that they were the Government of Hawaii and took possession of that island, with which we were at peace, and that they deposed the very constitution and the constituted authorities which have been made the pretext of objection; and thereby backed up by the minister of the United States, by the cannon of the United States, by the troops of the United States, they demanded the surrender of the Queen with her insufficient power, and thereupon she yielded, declaring her submission only to the power of the United States and her entire

ability to suppress any insurrection in her own kingdom. Suppose—

Mr. ALDRICH. Will the Senator from Wisconsin yield to me?

Mr. VILAS. Certainly.

Mr. ALDRICH. Suppose that every circumstance which the Senator has been picturing were absolutely true and confessed to be true on both sides of the Chamber, does that create any reason why the President of the United States should not take the American people sufficiently into his confidence to state what instructions he has given to a person who is properly presumed to be their representative as much as his?

Mr. VILAS. The Senator from Rhode Island interrupts me when I am answering a suggestion of the Senator from Massachusetts with a question utterly irrelevant and completely answered by the President's own message in the clause I have already read in which he has promised the amplest information to the people of the United States on the subject.

Mr. HOAR. When he has got through?

Mr. VILAS. As soon as he can deal with the subject, upon information soon to be obtained. But I was about to ask the Senator from Massachusetts if such should turn out to be the facts in this case, when was the act of war leveled at the Hawaiian Kingdom?

Mr. HOAR. I will answer the question with great pleasure.

Mr. VILAS. I will ask the Senator, then, if it was not an act of war to land the troops there and overthrow the Government by virtue of their force?

Mr. HOAR. If the Senator asks me the question I will answer it with immense satisfaction to myself. Whether it will be satisfactory to him I do not know.

There is no pretense that there was any act of force. Troops were landed. They were landed under the allegation that they were to be used to protect the lives and property of the American citizens. If the Queen was really yielding to those troops and not to the armed insurrection, there was nothing easier than for her to inquire of the American minister, who was within about 20 rods of her, or thereabouts all the time, whether those troops were to be permitted to assail her or to prevent her from maintaining herself. She did not do it. So the mere fact is that those troops were landed under the declaration of a peaceful and lawful purpose and in accordance with law among nations, and without putting the question, without going so far to require the discharge of a musket or the presenting of a musket toward the Hawaiian Government, at once said, "I yield." There is not an instance in all history where a government was overthrown under such circumstances and was yielding to the force of another power. But now let me put the question—

Mr. GRAY. May I ask the Senator from Massachusetts a question right there, before he leaves that point? He spoke of the Queen yielding to an armed insurrection. What information has he that there was an armed insurrection there on the 16th of January?

Mr. HOAR. The statement of Mr. Stevens and the state-

ment of the Provisional Government that they had the superior armed force at the time.

Mr. GRAY. There is not a bit of evidence of that.

Mr. HOAR. Now, I want to ask the Senator from Wisconsin—

Mr. VILAS. I wish to call the attention of the Senator from Massachusetts to the fact that he is not at all answering my question. He is begging it. He is asserting a state of facts contrary to the state of facts upon which I put the supposititious question. He is assuming that certain things exist, and I am asking him what will be his answer if the contrary proves to be the truth, if the facts as I state them should be disclosed and be convincing upon the testimony?

Mr. HOAR. I will answer the Senator.

Mr. VILAS. Very well.

Mr. HOAR. If it were true that twelve months ago, in violation of right and of international law, the Government of the United States, or some official of the United States, misrepresenting the Government in Hawaii, had done that thing, and a government had been changed and had been in peaceful possession of its power during the interval of twelve months, and the Government of the United States in full knowledge of the facts had recognized the new Government, and the President of the United States had sent a letter to it addressed to my great and good brother, Mr. Dole, I say that it would be an act of infamy for the President of the United States by the same messenger to send an inquiry as to what had been done in the past and to send instructions to overthrow the Government. It would be an act of infamy only paralleled by the act of Joab when he stabbed his neighbor under the fifth rib and said, "Art thou in health, my brother?"

Mr. VILAS. Mr. President, the Senator from Massachusetts appears in almost the same instant in two very unsatisfactory characters, as a reluctant and a too-willing witness. He does not answer the question which he said he would answer, and he proceeds to testify with volubility in respect to an entirely different state of facts. The question put to the Senator from Massachusetts was whether, if the troops were landed there under the circumstances I suggested, and the revolution was accomplished by their force applied directly or indirectly, it was the commission of an act of war? That was the question.

Mr. HOAR. That would depend on the question whether such an act was authorized by the Government. If a United States official did that thing and the President of the United States did not so understand it, but he reported something else, I do not at all conceive that it would be the duty of the United States six months afterwards to overthrow the existing condition of things.

Mr. VILAS. Mr. President—

Mr. HOAR. Will the Senator allow me to finish the sentence? The whole argument of the Senator from Wisconsin and the Senator from Texas would require us to give back Texas to Mexico to-day.

Mr. MILLS. The United States did not get Texas from Mexico. Texas came into the Union voluntarily.

Mr. VILAS. The Senator from Massachusetts flies from the defense of his own proposition. It was his proposition that there was an act of war, to be levied by the President of the United States, and he is declaring it without permitting the use of the evidence, which we hold under the seal of confidence, to show that the facts entirely overthrow it and prove the act of war to have originated under Minister Stevens and during a preceding Administration in this country.

But let me put a still further question to the Senator from Massachusetts in respect to his assertion about the act of war. Suppose under the circumstances I have mentioned it happened that the Queen of the Hawaiian Islands, supported by all her native subjects almost without exception, trusted and beloved by them, with the Government of which she was the head recognized as their Government, should yield to the demand made by the minister of the United States through his confederates for a surrender to the force of the United States and put that surrender in writing, in which he said, "I have entire command of all my troops, of all my powers, of all the places of this Government; I can suppress this little insurrectionary force on the instant, but I can not contend with the United States; if it be true, as is alleged, that the United States takes this position, I must yield; but distrusting the truth of it I yield only upon condition that it shall be referred to the Government at Washington to inquire into the truth of this controversy and the justice and wisdom of this demand." Suppose that the insurgents, advised by the minister of the United States and fortified by the troops behind him, accept the condition and the Queen turns over the Government, not to a body of insurgents whom she could have trodden out with her forces, but to the power of the United States and in confident submission to the justice of the United States to whom she yielded the question—

Mr. HOAR. Will the Senator allow me to put him a question?

Mr. VILAS. No; let me finish. Then, will the Senator from Massachusetts say that when the Government of the United States decides that question of submission it is engaged in an act of war upon the very people who accepted it and agreed to abide by the result?

Mr. HOAR. Now, allow me to ask the Senator a question.

The PRESIDING OFFICER. Does the Senator from Wisconsin yield to the Senator from Massachusetts?

Mr. VILAS. I should like to have the Senator answer whether that is an act of war.

Mr. HOAR. It is, in my opinion.

Mr. VILAS. An act of war?

Mr. HOAR. It is as flagrant an act of war the President is now proposing to do as can be. Going in in pursuance of such a pretense as that and undertaking to preserve social order, saying that anybody will be punished who disturbs the peace, as Minister Willis seems to have said under his instructions, is an act of war. Now, I have answered that question.

Mr. GRAY. What does the Senator think of Mr. Stevens?

Mr. HOAR. I am not talking about Mr. Stevens.

Mr. GRAY. No; I do not believe you are.

Mr. HOAR. I am answering the question. The Senator from Wisconsin puts me a question about the present act of Minister Willis and the present Administration, and the Senator from Delaware seems to think it is a subject of taunt that I do not talk about Mr. Stevens. I am answering a question, and I have answered it. Now, I ask the Senator from Wisconsin, suppose everything he has said is true, and every supposition he has made is sound, where does the President of the United States get his authority to do anything to right that wrong, if it be a wrong, without the consent of Congress, and to use the Army and Navy of the United States to do it? Will the Senator answer that question? Where is the authority for it in the President?

Mr. VILAS. The question which the Senator from Massachusetts puts is a question to which I hope at a future time to address some observations, fully, completely meeting it, at least so far as my judgment goes.

Mr. HOAR. Answer it; I can hear the Senator now.

Mr. VILAS. But at this point, precisely what I am saying is that we are not equipped to argue the question which is presented. We have not the facts at command to argue the question. Precisely what we want is a knowledge of the facts upon which we can argue the question.

Mr. HOAR. I ask the Senator for his construction of the Constitution of the United States, not for the facts.

Mr. VILAS. Oh, for what the President of the United States has done, for what the President of the United States has instructed his minister to do, he has ample and complete and perfect authority.

Mr. CULLOM. What is it?

Mr. HOAR. The Senator from Wisconsin is going to answer it in the future, but will he at this moment, if he can, imagine a state of facts under which the President of the United States has the constitutional authority to instruct Mr. Willis to go to Hawaii and preserve order and punish breaches of the peace when there is a *de facto* government there?

Mr. VILAS. I am under no necessity whatever to inquire into any question concerning an exercise of power by the President to send anybody to Hawaii to keep the peace or to keep the public order there. I have no idea the President has done anything of the kind, except as I learn in some way (perhaps I may say that, because I may have heard it outside of confidential information) that there was an attempt on the part of an American minister once to put troops on the island of Hawaii with a view of keeping the public peace there and discharging in that island not the duty which the United States owes to citizens of the United States, but the duty which the peaceful Government of Hawaii owed to the citizens of that country.

But, Mr. President, I had no purpose to engage in any extensive discussion of the matter at this time. I was merely putting to the Senator from Massachusetts a question which I supposed he would freely answer at once affirmatively, whether upon the state of facts which I suppose to have existed an act of war had been committed on Hawaii, not by the President of the United States, but under the former President of the United States, by

the minister clothed with the authority of this Government then resident in that island.

I desire explicitly to disclaim any idea of discourtesy to the Senator from Massachusetts, and explicitly to disclaim any want of willingness to have the full information presented. I seek it always, but because of the reasons which I have suggested I think before this resolution is sent to the President, the Committee on Foreign Relations ought to consider it in view of the peculiar circumstances. I therefore make a motion that the resolution be referred to the Committee on Foreign Relations.

EXECUTIVE USURPATION.

S P E E C H

OF

HON. GEORGE F. HOAR,
OF MASSACHUSETTS,

IN THE

SENATE OF THE UNITED STATES,

December 20, 1893.

WASHINGTON.

1893.

SPEECH
OF
HON. GEORGE F. HOAR.

HAWAIIAN AFFAIRS.

Mr. HOAR said:

Mr. PRESIDENT: I wish to address the Senate very briefly at this time. I do not propose to take up or deal with what is known as the Hawaiian question. The President's message and all previous information which has come to us on that subject have gone to the proper committee. When that committee has ascertained the facts in such a way as it shall think best, and has reported its own conclusions, we shall be ready to deal with it here. I wish to speak to a purely American question, a question affecting constitutional rights of the American people, and the constitutional power, duty, and responsibility of the various departments of the Government as established for a hundred years.

It appears that before the 4th of March, 1893, official information had come to the then Executive, which he had sent promptly and without disguise to the Senate, to the effect that in the foreign country of Hawaii there had been an attempt by the reigning Queen on her own authority to abrogate the constitution, to deprive a large number of persons who had the right of suffrage of that right, and by her own authority to declare a new constitution, new qualifications for suffrage, and new relations as to citizenship of the people dwelling in and governing that island. Her ministers protested, but in spite of their protests she went on and made her proclamation of the new constitution. Then there was a revolution. The people took up arms, as the English people took up arms against Charles I and James II, and as the American people took up arms against George III and established a new Government. Thereupon the men who had established the new Government declared that they intended to hold power until their islands could be annexed to the United States or the question of such annexation settled. The deposed Queen on her part claimed that she had yielded to a display of the force of the United States, and that she referred her rights to the justice of the United States.

It will be noticed that nobody suggested a purpose of referring that great and interesting question to Mr. Benjamin Harrison, of Indiana, or to Mr. Grover Cleveland, of New York, and that nobody there suggested the purpose of referring the question to any executive officer of the United States, whether the President or the Secretary of State or the Attorney-General or the

general of the Army or the admiral of the Navy, or anybody else. It was the United States to whose justice and sense of national honor and opinion as to international law this great controversy was proposed to be submitted.

Mr. President, that being the condition of things, the established Government recognized by every power on earth which had occasion to deal with it, and the deposed Government asking for a particular arbitrator on whose justice the dethroned Queen relied, to wit, the United States, there took place a certain transaction which suggests the American question, who is the United States of America; who represents in great national or international affairs its purpose, its honor, its policy as to foreign relations?

That transaction was this: The present President of the United States was inaugurated on Saturday, the 4th of March. The next day was Sunday. On Monday, the 6th of March, the names of a proposed Cabinet were sent to the Senate and were approved, and on the 7th, amid all the exciting and important questions with which an incoming Administration must deal, Hon. Mr. Blount, departed on a mission, on a secret mission, on a mission of which neither the people of the United States nor the House of Representatives of the United States nor the Senate of the United States have had any official information until Monday of the present week. His instructions followed him on the 11th, but they must have been determined on the 7th, when he took his departure; they must have been determined upon before the 7th, unless he accepted this grave and important duty on five minutes' notice, or at any rate in a single day.

So I do not think that any intelligent man can doubt that the purpose to do this thing was formed before either the President or the Secretary of State came into office, and before either of them had official access to the archives of the State Department. But that is an unimportant consideration.

Mr. President, I wish to ask the Senate to inquire as to the lawfulness of this proceeding under the American Constitution, and under the established and existing rules of international law. Mr. Blount was sent with instructions, which are familiar to us, to repair to Hawaii, and to take and report evidence as to a past transaction in its history, and as to the lawfulness of the existing and recognized government there.

Something more than that took place. He was authorized expressly to exercise, and be paramount in exercising, all the functions of the minister resident in Hawaii. He was to command the Navy, so far as any portion of it was in the port of Honolulu, and the admiral there was to obey his instructions. He was to recognize or to refuse to recognize the existing government, and was to recognize or refuse to recognize the deposed government, at his discretion. He was to have supreme and instant access to the archives. He was accredited and presented, as all foreign ministers are accredited and presented, to that government. He had a letter of credence, which he carried with him, and of which we have a copy, and the consul and the minister were alike enjoined to treat him as their official and controlling superior, and to facilitate the exercise of his paramount powers in every way they could, the minister being informed that he was not for the

present to be disturbed in the exercise of his ordinary functions.

Mr. President, the question of the legality of that proceeding is a question which it is the duty of an American Senator, and of every American Senator, to understand and to deal with. But before I come to that let me add one word in regard to the other question.

This was done, as I have said, secretly; it was concealed from the people and officially concealed from us; it was done in response to an invitation addressed to the United States, that in a supreme question in which its honor, its dignity, its justice were concerned, the United States should decide. The President, when he undertook to decide that question and to withhold from the people of the United States what he was doing until it was settled one way or the other past help, seems to have supposed that he was the United States of America, and whatever that phrase meant it was but a synonym for him.

The President of the United States has three powers, with which alone we are concerned in this discussion:

First. He may appoint ambassadors and other public ministers and consuls. This power can only be exercised by and with the advice and consent of the Senate. If there be a vacancy in such an office, he may fill it during a recess of the Senate by granting a commission which shall expire at the end of the next session. That is the first power, and it is the only power existing under our form of government to appoint public ministers, of whom, by the act of Congress I cited the other day, commissioners to go abroad to foreign governments are expressly declared to be one class. It is further declared by act of Congress in the section which enumerates envoys, ambassadors, commissioners, ministers, and consuls, that there shall be no other public ministers.

Second. The President may appoint inferior officers. But in all these cases the office must have been created, and the power of appointment vested in him by Congress.

Third. He may, to aid him in the performance and exercise of his executive powers, if convenient, appoint a mere agent as a messenger, or spy, or a person to gather or convey information. But such a person, so appointed, could be in no sense an officer of the United States, would take no oath of office, could exercise no official function, and could do no act whatever which could have any binding force on the United States, or any of the people, merely because he has done it.

Of these powers, the first two are unquestionable; and the third, I have no disposition to question now.

If the appointment of Mr. Blount falls within either of the first two classes I have enumerated, I suppose there will be no Senator so hardy as to defend his appointment. If he was appointed to exercise an inferior office, the power to fill such office has never been vested in the President. If he were a public minister his appointment was void, because the Senate was in session when it was made, and it was never consented to.

Now, it seems to my mind a proposition that never can be questioned, except under the excitement and stress of partisan emergency, that this gentleman was appointed as a public minister. He was understood by the President, who appointed him,

to be a public minister. He understood himself to be a public minister. The powers with which he was clothed were, in substance, the powers of a public minister of the amplest character. He was received as a public minister by the Government to which he was accredited. No power or function of a public minister was denied him. No definition of the term public minister could be made in which he would not have been included.

That person is, as it seems to me, clearly a public officer whose acts are binding on other persons by virtue of the authority he is exercising, when such acts originate in his own discretion or judgment, and he is not merely an agent conveying the mandate of another.

Jacobs, in his law dictionary, says:

It is the rule that where a man hath to do with another's affairs against his will and without his leave, that this is an office, and he who is in it is an officer.

In *United States vs. Hartwell*, 6 Wallace, 386, the question was whether the defendant, a clerk in the office of the Assistant Treasurer of the United States, was a public officer. He was appointed by the Secretary of the Treasury. Mr. Justice Swayne says:

An office is a public station or employment conferred by the appointment of government. The employment of the defendant was in the public service of the United States. He was appointed pursuant to law, and his compensation was fixed by law. Vacating the office of his superior would not have affected the tenure of his place. His duties were continuing and permanent, not occasional and temporary. They were to be such as his superior in office should prescribe.

In *United States vs. Germaine*, 99 U. S., 508, it was held that—

Civil surgeons, appointed by the Commissioner of Pensions, under section 4777 of the Revised Statutes, are not officers of the United States. They are the agents of the Commissioner, appointed by him and removable by him at his pleasure, to procure information needed to aid in the performance of his own official duties.

These cases illustrate the principle on which some of the former Administrations have proceeded in employing private agents, in a few cases, to negotiate treaties, or to learn by private inquiry the disposition of the people of foreign countries toward this Government, or to communicate to private or official persons information which may tend to influence public opinion abroad. Such persons perform no official act whatever. The President can not delegate the treaty-making power, or any part of it, and has never undertaken to do so. The officer who negotiates a treaty merely makes known to the representative of the foreign government with whom he deals what he is authorized to say the President of the United States is willing to do. But nothing of the slightest binding force has happened until the treaty is ratified by the President and until it is confirmed by the Senate.

There is one decisive test, as it seems to me, of the character which the President undertook to confer upon this agent. The public minister is not liable to be arrested or held personally responsible for acts done by his superior's order. The private citizen has no exemption from full responsibility to all the laws of the country where he happens to be. Will it be pretended that the government of Hawaii might have arrested Blount for treasonable plotting with the Queen, if he had offered to restore

her, under any circumstances? They could have done it, unless he were a minister of the United States. Will it be doubted that the investigation of the circumstances which led to the establishment of an existing government, with a view to its possible overthrow, is not an act which would warrant the instant expulsion from its territory of any person engaged in it, other than the representative of a foreign government? Is there any doubt that such action, under the law of nations, would warrant the instant arrest and imprisonment of such an offender?

Now, Mr. President, these questions are not to be answered by the Senator from Delaware [Mr. GRAY] by reviling me; nor by the Senator from Missouri [Mr. VEST] by reviling the Puritans of New England. They are vital questions, affecting the dignity and authority of the Senate in relation to one of its most important constitutional functions, and affecting the great question of all questions, whether the people of the United States are living under a Constitution or under a dictator. They are not to be whistled down the wind. No President of the United States, in his wildest dreams, ever thought that such a power as this belonged to the Executive before the 4th of March, 1893.

But we are told that there are some precedents affecting this matter, and a list of some three hundred or four hundred cases has been produced in the Senate in which the President of the United States has appointed certain public officers, or other agents, to negotiate treaties, or, in one or two instances, to go abroad in a purely private character with a view to ascertaining from private intercourse the friendly or unfriendly disposition of the people of another country. Not one of these precedents has the slightest relation whatever to the case we are now talking about. They were collected at the time of the fishery treaty, when it was objected that the President had no authority to associate with the Secretary of State two eminent gentlemen from private life to meet the representatives of Great Britain and discuss the details of an arrangement which was first to be submitted to him, and thereafter to the Senate, and which could have no validity or binding force whatever not given to it by the official action of the Executive and the Senate.

Even in that case the majority of the Committee on Foreign Relations of the Senate thought the appointment unauthorized, and on an examination of the precedents it turned out that of the four hundred cases cited there were but four or five, and those were of the most insignificant character, in which the function had not been conferred on an existing diplomatic officer of the United States, or the appointment submitted to the Senate for its approval, or, if the appointment were made in vacation, the function expired before the end of the next session. The Senator from New Hampshire [Mr. CHANDLER] analyzed at the time the report of the minority of the Committee on the Judiciary, which has been cited in the present discussion. I have myself gone over it again with care. I have also looked at the few additional cases produced by the Senator from Delaware. This is the result:

Of these cases, all but twelve are cases where the regular diplomatic officer of the United States, duly appointed according to law, usually the accredited minister to the country, though

in a few instances the Secretary of State or his assistant, where the treaty was made in Washington, have been authorized to negotiate a treaty. It is the familiar case of a direction by the Executive to a lawful officer to perform a duty germane to his office. It is well settled that such a direction may be given. It has been held that where Congress by law imposes a new duty upon an existing officer, it is not necessary that there should be a new appointment. Our friends on the other side are driven to such desperate shifts to support this unconstitutional assumption of power by the Executive, that they gravely parade in the face of the country four hundred cases, or thereabouts, of a direction by the President to the minister representing us in a foreign country, or to the Secretary of State, as a precedent for the appointment by the President of the United States of a new diplomatic officer, without the authority of law and without the consent of the Senate, although the Senate was in session, in defiance not merely of the statute but of the Constitution itself.

There are five or six cases of barbarous or semibarbarous nations where a like commission of agency, to ransom our subjects held in bondage, and to ascertain the terms on which a treaty of peace might be made, has been committed to officers of the Navy. In one or two instances justices of the Supreme Court, with the consent of the Senate, have exercised a like function.

Five of the twelve cases cited were submitted to the Senate, and I think in one or two others the appointment was made when the Senate was not in session, and the function expired before the end of the session.

But there are five cases in all, other than those which have taken place in the present Administration, and one or two others which occurred in President Cleveland's former Administration—notably the case of Mr. Putnam and Mr. Angell, who were associated with the Secretary of State in negotiating the fishery treaty—where the names were not submitted to the Senate.

In that class of cases the majority of the Committee on Foreign Relations held the proceeding invalid and unconstitutional. But in those cases, as I have said before, the person was a mere agency to communicate to the representatives of a foreign government what it was thought the President of the United States would be willing to do, and to report to our President what it was supposed the foreign government would be willing to do, nothing of an official character having happened, nothing of a binding character having happened, until the President himself had acted, and until in the case of a treaty the Senate had consented.

Now, when this officer makes his report of a treaty, signed or unsigned, no single step has been taken toward its validity. The projected treaty must be ratified by the President, and must have the assent of the Senate, by a two-thirds vote, before it can possess any validity. When he reports it, signed or unsigned, no single step has taken place toward its validity. So the precedents which our friends on the other side clutch in their desperation have no bearing on the case, and do not in the least help President Cleveland. These five insignificant precedents, and the one or two others not so insignificant, which have oc-

occurred during the Administration of the present Executive, have not the least relation or resemblance to the present case.

The person engaged to negotiate a treaty is but a mere agent, when his powers are analyzed, to ascertain and report facts. He is clothed with no official authority. He can perform no official act. His function is the same in essence as that of the messenger who should bear dispatches, or a statistician who should collect facts. He can only converse with a like person appointed by a foreign government, make known to that person what he thinks his government will consent to, and report to his own government what he thinks the foreign government will consent to. When he has agreed upon, signed, and brought home the draft of a treaty, nothing whatever has happened except that the President of the United States has received some information for his own guidance.

Will anybody pretend that Mr. Stevens, the minister resident at Honolulu, could have been appointed to his office while the Senate was in session, or could have continued to hold it, if appointed in vacation if there had been a subsequent session of the Senate, which had ended? I do not suppose the most capacious gullet of any defender of the President would swallow such a proposition, or the most capacious stomach of any such person would digest it, unless possibly some editor of a New York newspaper, of foreign birth, not supposed to have much understanding either of the spirit or letter of the Constitution of the United States.

Now, if that be true, will anybody stand here and claim that the appointment of a person authorized to exercise every function committed to Mr. Stevens, and more—paramount to him in official authority and duty in every respect—accredited to the same government, the archives of the legation open to him, the power to command a naval vessel of the United States expressly intrusted to him and, in the language of Mr. Blount's instructions, "Your [his] authority in all matters touching the relations of this Government to the existing or other government of the islands, and the protection of our citizens therein, being [is] paramount and in him [you] alone * * * being [is] vested full discretion and power to determine when such naval forces should be landed or withdrawn," may be appointed to a new office without the advice and consent of the Senate.

Just carry this extraordinary doctrine of assumption into all other departments of executive power. May the President, who can not appoint the Director of the Mint without the consent of the Senate, send an officer to take possession of the Mint and instruct him that in all matters of its direction his authority is to be paramount, to control the coin and the coinage and the bullion there awaiting coinage? Can he put such an official, under the pretense of getting information, or with the honest purpose of getting information, into the Treasury of the United States and say, "You are to repair to the Treasury of the United States and bring information as to how that is conducted, and while you are there your power over the entire concern and function of that Department is paramount, and its whole official direction is committed to you; without a bond and without official character you are to control two or three hundred million of treasure,

to sign bonds and bank notes, and issue them and receive them, and perform every official function of that great office you are to exercise?"

The President can not appoint, when the Senate is in session, a commodore of the Navy, or a major-general in the Army, without the consent and advice of the Senate. But he may, unquestionably, employ a private agent, who would not be an officer of the United States, to collect for his personal use information as to the condition of the Army. He might send such a person, in the case of a foreign war, under a flag of truce, to inquire of the general of the opposing forces upon what terms a truce or armistice or a safe conduct might be agreed upon. But will anybody pretend that because he has a right to do that, he might direct such person to take command of the Army, and say to him that his authority in all matters touching the conduct of the war should be paramount, and that in him alone should be vested full discretion and power to command, direct, and govern the Army, and determine whether the military forces of the United States should be advanced or withdrawn.

He may send a private agent of his on board a ship, or fleet, to inspect and report. He may, if he pleased, send such person on board a ship, or fleet, of another country, as a spy in time of war, or to gather information in time of peace. But I should not think the sending such spy to observe and report upon the conduct of high military and naval officers of this country should be encouraged. I do not think that if such a thing had been done by George Washington, or Andrew Jackson, or General Grant, or President Harrison, either of them would maintain the place in the respect of his country that he now holds. But there can, I suppose, be no doubt of the constitutional power. But will it be claimed that such a person might be sent on board a man-of-war, with the direction that his authority to command the ship, or govern the fleet, should be paramount; and that the commodore, though left to his ordinary duties, was only to render him such assistance as might be in his power? Can the President put such a private agent into the Mint, or into the Treasury, and subject the money or coin or bullion which is the property of the United States to his unchecked and irresponsible control?

If he can send Mr. Blount lawfully and constitutionally with the powers which are set forth in that letter of instructions (and which Mr. Gresham in alluding to them in his instructions to Mr. Willis expressly says are his official powers), he may continue him there during his entire four years in the same power. He may put a like officer in the legation to Great Britain, to France, to Germany, and every other foreign government.

Mr. President, one or the other of these alternatives may take place. If, the Senate being in session, he had a right to confer these powers upon Mr. Blount in addition to the duty of gathering information for him, the whole diplomatic service and the whole foreign policy of the United States is a question purely of executive power and the President shares it with no other department of the Government.

Mr. President, the treasure of the United States is in the keeping of the Treasurer. The precious metal, uncoined or in

process of coinage, may pass into the control of the keeper of the mint. But the people of the United States would be struck with horror at an attempt to subject them to the irresponsible authority of a private agent of the Executive. But the honor, the character, and good faith, the estimation—in the eyes of foreign nations and of all the civilized world—of the United States of America, more precious than silver or gold, are committed to the keeping of its diplomatic representatives abroad. They are officials expressly enumerated in the Constitution. They are officials whose title and character are defined by the ancient legislation of the country. They carry with them the United States of America wherever they go. Their dwelling place, wherever in the civilized world they may be, is for the time being the soil of their country, and is exempted from all other jurisdiction whatever. They can be clothed with this exalted and august character, except for brief intervals, only by the authority of this body.

If we submit to this astounding and unheard-of pretension, the authority of the Senate itself, over a large part of its constitutional domain, is abandoned and gone. One of the framers of the Constitution, who had more to do than any other man with the conception and creation of the Senate, declared soon after the Constitution was adopted, that he esteemed—

the provision made for appointments to office to be a matter of very great importance, on which the liberties and safety of the people depended nearly as much as on legislation. If that was vested in the President alone he might render himself despotic. It was a saying of one of the Kings of England, "that while the King could appoint the bishops and judges, he might have what religion and laws he pleased." To give that observation its full effect, they must hold their offices—

As Mr. Blount held his—

during his pleasure; by such appointments, without control, a power might be gradually established that would be more formidable than a standing army.

If the present claim be allowed, it is of no consequence that the Constitution vests in Congress the power to make war or peace. President Cleveland may have what foreign policy he pleases, either in war or peace.

Mr. President, I repeat that the appointment of this officer under the circumstances is an attempt on the part of the Executive to bring the whole foreign diplomatic policies of the United States under his unshared control; and the question whether it shall be met, resisted, and overthrown at the threshold is a question of far more importance than whatever may happen in the interesting commonwealth of Hawaii.

The Senator from Delaware [Mr. GRAY], who I regret not to see in his place, declared the other day that in all foreign matters he always left partisanship behind him. I have heard that Senator's speeches on the questions relating to foreign affairs. But I have never heard a like tribute to his exalted character, in that respect, from any other lips than his own. Such is my respect for that Senator, however, that I am willing to take his testimony, even in his own behalf, without other corroboration. But it occurs to me that there are some domestic questions in regard to which it might be hoped and expected a Senator of the United States might lay aside that extreme partisanship that until

now had been commonly imputed to my honorable friend from Delaware. It would occur to me that in a question of Executive usurpation—a question whether the President of the United States is to take upon himself to control all the foreign policies of this country, to the exclusion of all rightful participation in that great subject—an American Senator might be expected, at least, to see that the privileges, the authority, and the dignity of the body of which he was a member are not sacrificed.

If President Cleveland could have done what he did on the 7th day of March, 1893, in the case of Hawaii, he could have continued the diplomatic agencies, so established, throughout his entire Presidential term. He could have established a like diplomatic agency and authority in every civilized country on the face of the globe. What he could do in Hawaii he could do in Great Britain. Can he at this moment send Mr. Blount to Great Britain to-morrow morning with precisely the same power that he committed to him on the 7th of March, to take possession of the archives, to be paramount in all questions touching our relations with Great Britain, and to inquire into the lawfulness of the existing government there and the disposition of the English people toward it?

Now, Mr. President, I should like to ask our nonpartisan friends on the other side if they think the President has dealt quite frankly and ingenuously with the American people or the Senate, or with either party in Hawaii. What occasion has there been for this secrecy and mystery? Mr. Blount, as I have said, left on the 7th of March and his instructions followed him four days after.

The President must have meditated and devised this attack on the Administration of his predecessor before he entered upon his office and before the archives of the Department of State had become open to his inspection. The Senate was in session more than forty days in the spring. There was abundant opportunity to lay his doubts before this body, to obtain its assent to the appointment of this foreign minister, with his extraordinary powers. Andrew Jackson declared, on one of the most important occasions in our history, whatever might be the strictness of constitutional right, that it was most becoming and proper, where it was a question of recognizing a foreign government, the consent of Congress should be obtained if it were practicable. But can any Senator give a reason, an excuse, a decent pretext for concealing these transactions till the knowledge of them was wrung from a hesitating and reluctant Executive by public indignation and the demands of both Houses of Congress? Was there any reason that the American people should not know, from March to December, what was the errand of Mr. Blount, what was his instruction, and the limitation of his authority? If Mr. Willis went out instructed to reinstate the old Government, absolutely or upon conditions, could little Hawaii help herself, if the American people had been behind the act?

No, Mr. President, this Administration has been hurried into this transaction, not by any sense of justice to Hawaii, not by any desire to vindicate the national honor, but for the sake of making what has turned out to be a weak, impotent attack on its

predecessor. The great name and fame of Benjamin Harrison are a source of envy and discontent in some bosoms.

Place for a moment side by side the message by Minister Willis to Mr. Dole, and the message he was instructed, at the same time—on the same day—to convey to the Queen. The Queen, that she may be brought more easily to submit to the President's terms, is reminded that no action can be had without the consent of Congress. But no such message is sent to Dole. He is to be led to believe that the physical power of the United States is to be used for his overthrow.

Will it be claimed by the defenders of the President that when he sent Mr. Willis to Honolulu with orders to tell his great and good friend, President Dole, that the existing Government should abandon its functions and restore the Queen, and that he should go to the extent of his authority to compel compliance with that request, that he only meant to convey to President Dole an expression of his opinion in the matter, and expected Dole to understand that he neither possessed nor claimed any power in the premises? President Cleveland either intended to use the forces of our Navy for that purpose, and has abandoned the scheme because of the indignant remonstrance of the American people, or having no such power, he meant to intimidate President Dole by leading him to think that he had. Any other suggestion implies that the President of the United States, representing the dignity and authority of 65,000,000 Americans, by design and of purpose made a demand supposing that the authorities of whom he made it knew he neither had nor claimed any authority to enforce it. There is but one precedent for the instructions to Mr. Willis, if this be its explanation. I do not know whether the President had read Shakespeare, but Shakespeare—if that be true—had read the President. The instruction to Mr. Willis and the more recent attempt to keep it secret find their only parallel and example in Dogberry's instruction to the Watch:

DOGBERY. You are thought here to be the most senseless and fit man for the constable of the watch: therefore bear you the lantern. This is your charge: You shall comprehend all vagrom men; you are to bid any man stand, in the Prince's name.

SECOND WATCH. How if a' will not stand?

DOGBERY. Why, then, take no note of him, but let him go;—

[Laughter]—

and presently call the (Cabinet) together, and thank God you are rid of a knave.

VERGAS. If he will not stand when he is bidden, he is none of the Prince's subjects.

DOGBERY. True, and they are to meddle with none but the Prince's subjects. * * *

DOGBERY. Well, masters, good night; an there be any matter of weight chances, call up me; keep your fellows' counsels and your own, and good night.

[Laughter.]

I am not at this moment dealing with the conduct of the existing Government of Hawaii, or of the men who established it. Whatever they have done they have done in the face of day as became the lineage of which they were sprung. I do not see how any man can claim that the conduct of the Queen was not an act of abdication. Her powers were derived from a written constitution. When on her own unsupported authority she un-

dertook to overthrow that constitution and to deprive the people of Hawaii of the share in the Government which it conferred, it was an act of abdication—an act of abdication according to every historic precedent in the story of liberty. How the President tries to slur that over in his message! If anything were wanting to destroy the entire authority of that document, as a trustworthy, unbiassed, and impartial narration of facts, you would need but to compare the narrative of the message with the known and undisputed actuality of the transaction. Was he dealing ingenuously with us or with the people of the United States? Was he dealing ingenuously with the Senate or the House of Representatives when he said in his message:

On Saturday, January 14, 1893, the Queen of Hawaii, who had been contemplating the proclamation of a new constitution, had, in deference to the wishes and remonstrances of her cabinet, renounced the project for the present at least.

And when he left the narrative there he knew that the Queen had proclaimed the constitution; he knew that she had proclaimed it after the cabinet had remonstrated, after part of them had left her presence for fear of their lives if they remained to witness it; and he knew that she had given up the attempt to enforce it, only because of her fear of the popular resistance.

The President has not a word of disapprobation for the private or for the public profligacy on the part of the Queen. The passage of the shameless lottery bill, the corrupt setting on sale of her constitutional functions, the attempt to disfranchise a large class of the voters of Hawaii and to proclaim a new government in spite of the remonstrances in her cabinet, the fact that the Queen yielded not to remonstrances of the cabinet but to the rising indignation of the people, are all suppressed, as well as the implied but clear announcement of her determination to renew the attempt if a better opportunity were to come. All this is slurred over in the message which has been addressed to us; and the President only says, "The Queen of Hawaii, who had been contemplating the proclamation of a new constitution, had, in deference to the wishes and remonstrances of her cabinet, renounced the project for the present at least."

Mr. President, I say that act of the Queen, on the admitted facts, was an act of abdication as much as the abandonment of the throne by Louis Philippe or by James II. It was impossible, after such an act of abdication not provided for in the constitution, to establish a new government except as was done by the concerted action of the men of influence and character and property and intelligence who were near the seat of government. It was impossible to submit it to a popular vote. There never was a revolution on earth which was brought about by the action of the ruling power itself, followed by the establishment of a government any other way.

At the outbreak of our own Revolution the executive government of Massachusetts was vested in a committee of safety, and all the commissions to officers, civil and military, were issued for several years, I believe, in their name.

The action of the Provisional Government in Hawaii, whatever may be the fate of that commonwealth, will have an honorable place in the history of human liberty. The United States forces

have been withdrawn, certainly since Mr. Blount pulled down the flag, and there is no report of a life lost, a human being injured, or a single act of disorder. The Government has been recognized by all foreign powers, and its functions have proceeded peaceably and in order. It has received with dignity the representatives of the great nations of the earth, and has sent its own to other countries.

I have heard that Mr. Thurston, the minister of the Hawaiian Republic here, is just now absent from his post. I do not know the cause of his absence and I have no official information where he has gone. I can only conjecture what may have been his last confidential conversation with Secretary Gresham. But I remember to have read somewhere of a memorable interview between John, Duke of Argyll, and Queen Caroline, shortly after the famous Porteous mob of Edinburgh. The angry Queen told the old Scotch nobleman that she would make a hunting ground of Scotland. "In that case, your majesty," said the duke, "I must go back to Inverary and get my hounds ready." I suspect Minister Thurston—from what I hear of him, and from what I hear of the men who are standing with him—may have infused a little of the same spirit into his reply to the diplomatic agent of his modern American majesty.

Mr. President, I think these questions which have nothing to do with the conduct of a past Administration, but have something to do with the pretensions of one that is present, have also a little interest for the liberty-loving, order-loving, Constitution-loving people of the United States. If they have not, if the Constitution is to be disregarded, and "an unconstitutional desire to meddle with the existing affairs of a foreign people not our own ought to regulate our conduct, I have entirely misapprehended the mission and the character of our Government and the behavior which the conscience of the people demands of our public servants."

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